

CITY OF FRISCO, TEXAS

RESOLUTION NO. 05-02-33R


A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS
HEREBY AUTHORIZING THE CITY MANAGER OF THE CITY OF FRISCO, TEXAS
TO EXECUTE A FIRST AMENDMENT TO ROAD AGREEMENT BY AND BETWEEN
THE CITY OF FRISCO AND TOWN AND COUNTRY, INC., FOR THE
CONSTRUCTION OF SPRING CREEK PARKWAY.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
FRISCO, TEXAS:

SECTION 1: The City Manager of the City of Frisco, Texas, is hereby
authorized to execute, on behalf of the City Council of the City of Frisco, Texas, a
First Amendment to Road Agreement by and between the City of Frisco and Town
and Country, Inc., for the construction of Spring Creek Parkway between State
Highway 121 and Town and Country Boulevard, a copy of which is attached hereto
and incorporated herein for all purposes.

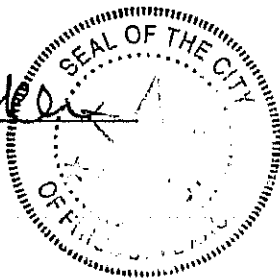
SECTION 2: This Resolution shall take effect immediately upon its passage.

RESOLVED THIS the 9th day of February, 2005.


E. Michael Simpson, Mayor

ATTEST TO:


Nan Parker
City Secretary



**FIRST AMENDMENT TO ROAD AGREEMENT FOR THE
CONSTRUCTION OF SPRING CREEK PARKWAY BETWEEN
STATE HIGHWAY 121 AND TOWN AND COUNTRY BOULEVARD**

This First Amendment to Road Agreement for the Construction of Spring Creek Parkway Between State Highway 121 and Town and Country Boulevard ("First Amendment") dated as of the 15 day of MARCH, 2005, is made and entered into by and between the City of Frisco, Texas, a Texas municipal corporation ("Frisco") and Town and Country, Inc., a Texas corporation ("Town and Country").

WHEREAS, Frisco and Town and Country entered into that certain Road Agreement for the Construction of Spring Creek Parkway Between State Highway 121 and Town and Country Boulevard as of the 5th day of March, 1999, which agreement is incorporated herein by reference (the "Road Agreement"); and

WHEREAS, Frisco and Town and Country desire to amend the Road Agreement to revise the right-of-way cost due from Town and Country to Frisco. Frisco and Town and Country intend for this First Amendment to set forth the entirety of their agreement made this date as it relates to the matters set forth herein.

Now, therefore, in consideration of the covenants and conditions contained in this First Amendment, Frisco and Town and Country agree as follows:

1. Except as otherwise stated herein, the terms defined in the Road Agreement will have the same definition and meaning when utilized in this First Amendment.

2. Paragraph 1, Right-of-Way Subject to Agreement of the Road Agreement is hereby deleted in its entirety and replaced with the following:

"The right-of-way that is subject to this Agreement is 5.76 acres, more or less, and more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes (the "Spring Creek Parkway Extension"). In general, the Spring Creek Parkway Extension includes the western two (2) lanes of Spring Creek Parkway from State Highway 121 to Town and Country Boulevard and additional right-of-way of at least three hundred (300) feet at the southern end of the Spring Creek Parkway Extension."

3. Paragraph 2, Right-of-Way Costs, of the Road Agreement is hereby deleted in its entirety and replaced with the following:

"Town and Country and Frisco each agree to pay fifty percent (50%) of the costs (costs to include all costs necessary to obtain needed right-of-way including all costs associated with eminent domain proceedings) to acquire all right-of-way required by Frisco for the Spring Creek Parkway Extension and the parties agree

the total cost of such right-of-way is Five Hundred Ninety Three Thousand One Hundred Eighty Four and 74/100 Dollars (\$593,184.74).

Town and Country's one-half (1/2) cost for the Spring Creek Parkway Extension is Two Hundred Ninety Six Thousand Five Hundred Ninety Two and 37/100 Dollars (\$296,592.37) which shall be paid as follows:

- a) Town and Country shall pay Frisco Seventy One Thousand Five Hundred Ninety Two and 37/100 Dollars (\$71,592.37) within ten (10) business days after the approval of the First Amendment to Road Agreement by the City Council at a City Council meeting;
- b) Town and Country shall receive partial credit for its obligation to pay one half (1/2) of the cost of the Spring Creek Parkway Extension, which shall not exceed Two Hundred Twenty Five Thousand and No/100 Dollars (\$225,000.00), for the costs of design and construction according to City specifications and City Engineer approval of (i) the signal light at Legacy and Town and Country Boulevard; (ii) the dual right turn lanes on Legacy at State Highway 121; and (iii) the left turn lane on Town and Country Boulevard at Legacy, all of which shall be completed by October 1, 2005.
- c) After Town and Country receives credit for the cost of the improvements all as described above, any remaining portion of Town and Country's obligation to pay one half (1/2) of the cost for the Spring Creek Parkway Extension shall be paid to Frisco within ten (10) business days of the City Engineer's approval of the improvements described above.


4. This First Amendment shall be and is hereby incorporated into the Road Agreement for all intents and purposes, and except as otherwise stated herein, the terms, provisions, and definitions of the Road Agreement and amendments thereto shall apply to this First Amendment.

5. The Road Agreement is hereby ratified and approved in all respects, except where inconsistent with the terms of this First Amendment. The parties also agree that as of the date of execution of this First Amendment, neither party is in breach of the Road Agreement.

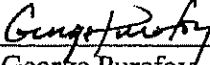
6. This First Amendment may be executed in any number of counterparts, each of which will be an original but all of which together will constitute but one instrument. A facsimile signature will also be deemed to constitute an original if properly executed.

IN WITNESS WHEREOF, the parties have executed this First Amendment and caused this First Amendment to be effective on the latest date as reflected by the signatures below.

TOWN AND COUNTRY, INC.,
a Texas Corporation


By: Peter F. Streit
Its: Executive Vice President
Date: 4.8.05

CITY OF FRISCO, TEXAS


By: George Purefoy
Its: City Manager
Date: 4/14/05

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 8 day of April, 2005, by Peter Streit, Executive VP of Town and Country, Inc., a Texas corporation, known to me to be the person whose name is subscribed to the foregoing instrument; and he acknowledged to me that he executed said instrument for the purposes and consideration therein expressed on behalf of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 8 day of April, 2005.

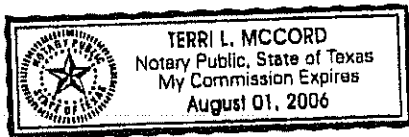


Jennifer Blunderman Brady
Notary Public in and for the State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, on this day personally appeared George Purefoy, the City Manager of the City of Frisco, Texas, known to me to be one of the persons whose name is subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for the City of Frisco, Texas and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 14th day of April, 2005.



Terri L. McCord
Notary Public in and for the State of Texas

My Commission Expires:
Aug. 1, 2006